

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2898 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KUMARSHREE GHANSHYAMSINH HARISINH JHALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2898 of 2004
MR NK MAJMUDAR for Petitioner No. 1-2
MR SP MAJMUDAR for Petitioner No. 1-2
Shri Nagesh Sood, AGP for Respondent No. 1-2
NOTICE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/07/2004

ORAL JUDGEMENT

Rule. Mr. Manav Mehta, for Mr. NK Majmudar,
learned advocate appears for the petitioners. Shri Sood,
learned AGP waives service of Rule on behalf of

respondents. With the consent of the parties the matter is taken up for final hearing today.

2. An order came to be passed in favour of the petitioners by the competent authority with regard to payment of ex gratia amount under the provisions of the Bombay Merged Territories (Jagir Abolition) Act, 1953 (hereinafter referred to as "the Act"). It is the case of the petitioners that they were receiving such payment since 1.8.1954 and by separate awards dated 23.9.1997 the petitioners were sanctioned ex-gratia amounts of Rs. 3890 and Rs. 9725 respectively for the period from 1.8.1954 to 31.12.1986 and for the period from 1.1.1987 onwards the petitioners were to get the same pursuant to the order passed by the Collector, Sabarkantha dated 23.9.1997. The petitioners in fact were paid the aforesaid amounts also. However, subsequently the petitioners were not paid the ex-gratia amounts. Various applications were made to the competent authority and on the basis of the policy/circular of the Government a request was also made to revise the ex-gratia payment amount and to enhance the same. Thereafter by order dated 26.5.1997 the Collector, Sabarkantha took an ex parte decision rejecting the applications of the petitioners for continuation of ex-gratia amount payments on the ground that they have sold agricultural lands of an area admeasuring 17 acres and 13 gunthas which according to the Collector was in possession of the petitioner and was more than the economic holding. Being aggrieved and dissatisfied with the order passed by the Collector, Sabarkantha, dated 26.5.1997 rejecting the applications for continuance of ex-gratia payments the petitioners preferred an appeal before the Gujarat Revenue Tribunal, being Appeal No. TEN.A.A.6/98. The Tribunal by order dated 28th March 2002 dismissed the said appeal confirming the order passed by the Collector, Sabarkantha dated 26.5.1997. Being aggrieved and dissatisfied with the same, the petitioners have preferred the Special Civil Application under Article 227 of the Constitution of India.

3. Shri Mehta, learned advocate appearing on behalf of the petitioners has vehemently submitted that before passing the order dated 26.5.1997 no opportunity of being heard was given to the petitioners and the Collector, Sabarkantha has passed the order on a wrong premise that the petitioners had sold agricultural lands of an area admeasuring 17 acres and 13 gunthas and thus they were in possession of more land than the economic holding. He has submitted that in fact the petitioners have not sold the land admeasuring 17 acres and 13 gunthas and in fact

they were not in possession of land more than the economic holding. He has submitted that the impugned order dated 26.5.1997 discontinuing the payment of ex-gratia amounts is passed without issuing any show cause notice and without giving any opportunity of hearing to them and had the petitioners been served with show cause notices and/or given opportunity of hearing then the petitioners would have shown the correct position. He has further submitted that this aspect has not been considered by the appropriate authority, i.e., Gujarat Revenue Tribunal and therefore requested to quash and set aside the judgment and order passed by the G.R.T. as well as the order passed by the Collector, Sabarkantha, dated 26.5.1997.

4. Shri Sood, learned AGP appearing on behalf of the State Government however tried to support the order passed by the Collector, Sabarkantha and the Tribunal. He has submitted that the Collector has on inquiry found that after passing the order of 1997 in between the petitioners have sold the land admeasuring 17 acres and 13 gunthas meaning thereby the petitioners were in possession of land more than the economic holding. He has further submitted that as the petitioners were possessing the land more than the economic holding they were not entitled to ex-gratia payments under the aforesaid Act and therefore the initial order itself is bad in law and therefore requested to dismiss the present petition.

5. Heard the learned advocate appearing for the parties. By order dated 23.9.1987 the Collector, Sabarkantha passed two separate awards and sanctioned ex-gratia amounts for the period from 1.8.1954 to 31.12.1986 and further passed an order to pay ex-gratia amounts for the period from 1.1.1987 onwards. It seems an inquiry came to be conducted by the Collector and on the basis of the report submitted by the Raval Committee the Collector, Sabarkantha found that the petitioners were in fact in possession of land more than the economic holding as according to the Collector the petitioners have sold agricultural lands of an area admeasuring 17 acres and 13 gunthas of land after 1968. It is the case of the petitioners that in fact they did not sell any agricultural land more particularly land of 17 acres and 13 gunthas, however as no opportunity is given to the petitioner they could not point out correct position and the order of cancelling and/or discontinuing the ex-gratia amount which was paid to the petitioner will entail civil consequences. Before passing the order and/or discontinuing the ex-gratia amount the petitioners

are required to be heard and given an opportunity. If the petitioners would have been given opportunity then they would have pointed out that they did not sell any land much less the land of 17 acres and 13 gunthas. Therefore the order passed by the Collector, Sabarkantha dated 26.5.1997 is bad in law and against the principles of natural justice. Accordingly, the order passed by the Collector, Sabarkantha dated 26.5.1997 in discontinuing payment of ex-gratia amount to the petitioners is quashed and set aside. Consequently, the judgment and order passed by the Gujarat Revenue Tribunal in confirming the order passed by the Collector, Sabarkantha dated 26.5.1997 is quashed and set aside. The matter is remanded to the Collector for passing a fresh order in accordance with law and on merits after giving opportunity of being heard to the petitioners within a period of 4 months uninfluenced by the earlier orders.

6. For the foregoing reasons, the petition succeeds. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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